

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 927 of 1990
with
First Appeals Nos. 928 to 1033 of 1990

with

CROSS OBJECTION No 101 of 1999

to

CROSS OBJECTION No.103 of 1999, Cross Objection No.181/98, 186/98, 104/99, 105/99, 106/99, 107/99, 108/99, 109/99, 188/98, 110/99, 111/99, 112/99, 113/99, 184/98, 114/99, 115/99, 116/99, 117/99, 118/99, 119/99, 120/99, 183/98, 121/99, 122/99, 123/99, 124/99, 125/99, 126/99, 127/99, 128/99, 129/99, 130/99, 131/99, 132/99, 133/99, 182/98, 134/99, 135/99, 187/98, 136/99, 189/98, 137/99, 138/99, 139/99, 140/99, 141/99, 142/99, 144/99, 190/98, 145/99, 146/99, 147/99, 148/99, 149/99, 150/99, 151/99, 152/99, 153/99, 154/99, 155/99, and 156/99

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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Versus

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Appearance:

Mr.P.G. Desai, GP, for the State, in First Appeals Nos.929, 930, 967, 1000 to 1004, 1007, 1010, 1027, 1032, 1033 of 1990

Mr.M.R. Raval, AGP, for the State, in First Appeals Nos. 927, 928, 931 to 966, 968 to 977 of 1990

Mr.H.L. Jani, AGP, for the State, in First Appeals Nos.978 to 999, 1005, 1006, 1008, 1009, 1011 to 1026, 1029 to 1031 of 1990

Mr. Akil Kurishi for respondent No.1 in First Appeals Nos.927/90, 928/90,934/90,935/90, 942/90, 944/90, 946/90, 947/90, 950/90, 951/90, 951/90, 952/90, 953/90,954/90, 955/90, 956/90, 958/90, 959/90, 963/90, 964/90, 966/90, 968/90, 973/90, 975/90, 976/90, 979/90, 980/90, 981/90, 982/90, 983/90, 986/90, 990/90, 992/90, 993/90,995/90, 996/90, 999/90, 1000/90, 1021/90, 1022/90, 1023/90, 1027/90, 1033/90

Mr.B.P. Tanna for respondent No.2, in

First Appeals Nos.927/90, 928/90,929/90,932/90,933/90,934/90, 935/90,942/90,936/90,937/90,939/90,941/90, 944/90,945/90,946/90, 947/90, 948/90, 950/90, 951/90, 951/90, 952/90, 953/90,954/90, 955/90, 956/90, 957/90, 958/90, 959/90, 960/90, 961/90,962/90, 963/90, 964/90, 965/90,966/90,967/90, 968/90, 969/90, 972/90, 974/90, 975/90, 976/90, 977/90, 979/90, 980/90, 981/90, 982/90, 983/90, 984/90, 985/90,986/90, 988/90, 989/90, 990/90, 991/90, 992/90, 993/90,994/90,995/90, 997/90,998/90,999/90, 1000/90, 1002/90, 1003/90, 1004/90, 1005/90, 1006/90, 1007/90,1008/90, 1009/90, 1010/90,1011/90,1012/90,1013/90,1016/90, 1017/90,1019/90,1020/90,1021/90, 1022/90, 1023/90, 1024/90,1025/90, 1027/90, 1028/90, 1029/90, 1030/90, 1031/90, 1032/90,1033/90

for respondent No.6 in First Appeal No.970/90, for respondent No.7 in First Appeal No.971/90,993/90,

for respondent No.4 in First Appeal No.978/90,987/90,1015/90,

for respondent No.3 in First Appeal No.992/90,996/90,1026/90,

for respondent No.5 in First Appeal No.1023/90

Mr.J.N. Patel for respondent No.1 in First Appeals Nos.927/90, 929/90,932/90, 933/90 to 941/90, 943/90 to 950/90, 952/90, 954/90, 955/90,958/90, 961/90, 963/90 to 969/90, 971/90 to 974/90, 976/90, 979/90 to 981/90, 983/90, 986/90, 987/90, 989/90, 990/90, 992/90,993/90 to 999/90, 1001/90 to 1005/90, 1008/90, 1010/90 to 1013/90, 1016/90 to 1018/90, 1020/90 to 1028/90, 1031/90 to 1033/90.

Y.V. Shah for respondent No.1 in First Appeal No.933/90,
938/90, 987/90, 989/90, 1005/90, 1008/90, 1010/90,
1018/90,

Mr. R.M. Vin for respondent No.1 in First Appeals Nos
937/90, 941/90, 955/90, 951/90, 958/90, with Cross
Objections Nos. 9700/93, 9701/93, 9702/93, 9789/93.

Mr. J.N. Patel, for respondent No.1 in First Appeal
No.938/90

Mr. Jitendra M. Patel, for respondents No.1, 3 and 5 in
First Appeal No.945/90, for respondents Nos.1/1, 1/4 in
First Appeal No.965/90, for respondent No.1 in First
Appeal No.969/90, 970/90, 974/90, 978/90, 1007/90, 1020/90,
1029/90, 1030/90,

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 01/03/99

ORAL JUDGEMENT

COMMON ORAL JUDGMENT: (Per: Kadri, J.)

1. First Appeals Nos. 927 of 1990 to 1033 of 1990 are filed by the Officer of Special Duty (Land Acquisition), Ahmedabad, under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated April 21, 1989, rendered by the learned Second Assistant Judge, Bharuch, in Land Acquisition Case No.255 of 1986 to Land Acquisition Case No.361 of 1986. The respondents-claimants have filed abovenumbered cross objections under Order 41 Rule 22 of the Code of Civil Procedure, 1908, for enhancement of compensation.

2. As all these First Appeals and cross objections arise out of the common judgment and award rendered in the above-mentioned group of Land Reference Cases, and, as common questions of facts and law arise in these appeals and cross objections, we propose to dispose them of by this common judgment.

3. Gujarat Industrial Development Corporation, Ahmedabad, had made a proposal on June 22, 1987, to acquire 280 Acres of lands belonging to the respondents, situated at villages Piraman and Gadkhola, Taluka

Ankleshwar, District Bharuch, for extension of Ankleshwar Industrial Estate. The said proposal was approved by the State Government and notification under Section 4(1) of the Act was published in the official gazette on January 22, 1979. Thereafter, amended notification under Section 4(1) of the Act was published on February 5, 1990. The owners of the acquired lands filed their objections before the Land Acquisition Officer, who, after considering the objections, submitted report under Section 5(A)(2) of the Act to the State Government. Thereafter, declaration under Section 6 of the Act was made which was published in the government gazette on October 24, 1981. The Special Land Acquisition Officer served notices under Section 9(3) of the Act on the owners whose lands were acquired. The Special Land Acquisition Officer on the basis of the materials placed before him, made award on August 29, 1983, and fixed market value of the acquired lands of village Gadkhol at Rs.30,000/- per Hectare and of village Piraman at Rs.25,000/- per Hectare. The Special Land Acquisition Officer awarded compensation to the respondents with regard to 11 survey numbers of village Piraman and one survey number of village Gadkhol at the rate of Rs.27,180/- per Hectare on the basis of consent of the parties.

4. The claimants were of the opinion that compensation offered by the Special Land Acquisition Officer was inadequate and, therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the District Court, Bharuch. The said applications were referred to the District Court, Bharuch, by the Special Land Acquisition Officer which were numbered as Land Acquisition Case No.255 of 1986 to Land Acquisition Case No.361 of 1986. The claimants averred in the applications filed under Section 18 of the Act that the Special Land Acquisition Officer had not considered the sale instances of nearby lands of the same villages for determination of market value of the acquired lands as on the date of publication of notification under Section 4(1) of the Act. It was claimed that the market value of the lands acquired ought to have been fixed taking into consideration the potentiality of the lands. It was stressed that the acquired lands were situated in a developed industrial area and it would fetch more price than offered by the Special Land Acquisition Officer. The claimants in all the reference applications claimed compensation at the rate of Rs.40,000/- per Hectare on the ground that the acquired lands were situated in the best developed area and many industries like Gujarat

Chemicals, Asian Paint and other Industries were situated nearby. According to the claimants, the GIDC had started activities for industrial development since the year 1975 and pursuant to the public notification issued under Section 4(1) of the Act, it had acquired vast area of lands of adjoining villages, for example, Kapodara, Piraman, Gadkhola, Bhadkodra, Kosamdi, etc. and as the acquired lands had building potentiality and were connected with roads with Bharuch and Ankleshwar towns, they should be awarded higher compensation. It was claimed that the Special Land Acquisition Officer had awarded compensation without considering sales of 1975 to 1977 and had also ignored previous awards rendered by the District Court, Bharuch, with regard to acquired lands of nearby villages, and, therefore, the reference applications should be allowed.

5. The Special Land Acquisition Officer filed his reply at Exh.4, inter alia, contending that the award of the Special Land Acquisition Officer was just and adequate and as the claimants, pursuant to the notice issued under Section 9(3) of the Act, had not claimed specific amount, the reference applications should be dismissed in view of provisions of Section 25 of the Act. It was stated that the claimants had accepted the amount of compensation without any protest and, therefore, the reference applications under Section 18 of the Act filed by the respondents were not maintainable. Lastly, it was submitted that the Special Land Acquisition officer while fixing the market value of the land, had taken into consideration all the relevant materials placed before him and, therefore, the reference applications should be dismissed. The acquiring body, i.e. Gujarat Industrial Development Corporation, filed its reply at Exh.7, inter alia, contending that compensation awarded by the Special Land Acquisition Officer was just and adequate and the claimants had accepted this compensation without protest. It was further averred that the claim in the reference applications was exaggerated as well as excessive and the reference applications be dismissed.

6. On the basis of the rival contentions raised by the respondents and the appellants, the Reference Court raised necessary issues for determination. In support of their case for enhancement of compensation, the respondents examined claimant of Land Acquisition Case No.289 of 1986, Yakub Mohmed Yunia, at Exh.10. The witness in his oral testimony described situation of the acquired lands of village Piraman and village Gadkhola, and stated that both the villages were connected by road and rail with the towns of Bharuch and Ankleshwar and

were also having electricity facility. He deposed that, because of industrial development, in surrounding areas of town of Ankleshwar and Bharuch, there was heavy pressure on the lands of adjoining villages Piraman and Gadkhola and, therefore, price of the lands had increased. According to the witness, due to heavy industrialization in the surrounding area, the acquired lands had building potentiality which was not considered by the Land Acquisition Officer while fixing market value of the acquired lands and, therefore, higher compensation should be paid to the claimants. During oral deposition of this witness, previous awards of the Reference Court with regard to acquired lands of surrounding villages were produced.

7. The claimant of Land Acquisition Reference No.234 of 1986, Balubhai Desaibhai Patel, was examined at Exh.21. He deposed that, in the sim of village Gadkhola, there were residential societies such as Sadant Nagar, Girnar Society, Bhavna Society, D.G. Nagar Society, Patel Nagar Society, Anand Vihar, Jamta Vihar, Pushpvatika, Mama Nagri Bhavan. He also deposed that there was a shopping complex and there were ice factory, carbon factory, spinning mill etc. situated in village Gadkhola. He highlighted that in the sim of village Gadkhola, O.N.G.C. colony was constructed in the year 1961-62 and other factories, such as Pre Con Pipe Factory, Gly Con Pipe Factory, Gujarat Cables, Sugar Factory, were established before publication of notification under Section 4(1) of the Act. The claimants, to substantiate their claim for enhancement of compensation, also examined witness Yusuf Ismail Pandor at Exh.46. This witness was examined for claim of compensation for bore which was situated in the acquired lands. The witnesses of the claimants during their oral deposition produced various documents in the nature of sale deeds and previous awards of Court which were exhibited by the Reference Court, reference to which will be made at the appropriate stage in this judgment.

8. The Acquiring Body and the State Government did not adduce oral evidence. However, the Acquiring Body produced combined map of the acquired lands of village Ankleshwar, village Piraman, village Gadkhola and village Bhadkodra.

9. The Reference Court, on appreciation of oral as well as documentary evidence produced by the claimants-respondents, deduced that the post-notification sale instances produced by the respondents cannot be relied upon for determination of the market value of the

acquired lands of both the villages. The Reference Court further held that the sale instances of Ankleshwar town were not comparable instances for determination of the market price of the acquired lands of villages Piraman and Gadkhola, because they are related to non-agricultural lands. The Reference Court concluded that the prices of non-agricultural lands of villages Piraman and Gadkhola were running parallel, but the price of the agricultural lands showed different rates. However, the Reference Court concluded that the acquired lands of both the villages were having high potentiality. The Reference Court was of the opinion that the price of sale instances relied upon by the respondents reflected that the price of agricultural lands would be around Rs.1000/- per Are. As the acquired lands were having building potentiality, the Reference Court added 25% towards potentiality and arrived at a figure of Rs.1250 per Are for the acquired lands of both the villages. As large areas of lands of both the villages were acquired, the Reference Court deducted 30% on the ground of large acquisition and came to the conclusion that the market price of the acquired lands of both the villages was Rs.875/- per Are on the relevant date. The Reference Court awarded compensation of Rs.8000/- for bore situated in the acquired land which was subject matter of Land Acquisition Reference No.262 of 1986. The Reference Court, on over all appreciation of evidence, concluded that the respondents had not given their consent nor any agreement was arrived at between the G.I.D.C. and the respondents for accepting consent rate of Rs.27,180/- per Hectare for the acquired lands. The Reference Court extended benefit of Section 23(1-A) and Section 23(2) of the Act to the respondents. The Reference Court also awarded interest on the additional amount of compensation as well as on the amount of interest under Section 23(1-A) of the Act and also on the amount of solatium under Section 23(2) of the Act.

10. The State of Gujarat, by filing First Appeals as mentioned in paragraph 1 of the judgment, has challenged the enhancement of compensation made by the Reference Court and the claimants, by filing cross objections, have claimed compensation of the acquired lands at the rate of Rs.1500/- per Are.

11. The learned counsel for the State Government have vehemently submitted that the Reference Court has erred in enhancing compensation while determining market value of the acquired lands of village Piraman and village Gadkhola at the rate of Rs.875/- per Are. It is claimed by the learned counsel for the appellant that village Piraman and village Gadkhola are far away from Ankleshwar

town and there was no industrial development surrounding the lands of both the villages and, therefore, reliance placed on previous awards was uncalled for. It was highlighted that the acquired lands of previous awards were not at all comparable with the acquired lands and, therefore, the Reference Court was not justified in placing reliance on the previous awards. The learned counsel for the appellants contended that the Reference Court erred in awarding interest on the additional amount as well as on the amount of solatium under Section 23(1-A) of the Act and, therefore, the appeals should be allowed. Lastly, it was submitted by the learned counsel for the appellants that the market price determined by the Reference Court in respect of the acquired lands in the present case is highly excessive and therefore the appeals should be allowed and cross objections filed by the respondents should be dismissed.

12. The learned counsel appearing for the claimants submitted that the Reference Court was not justified in not placing reliance on the sale deeds, which showed that the market price of the acquired lands of both the villages was around Rs.1500/- per Are on the relevant date, i.e. on the date of publication of notification under Section 4(1) of the Act and, therefore, cross objections should be allowed. It was submitted by the learned counsel appearing for the claimants that because of industrial development which had taken place surrounding Ankleshwar town, there was heavy pressure on the lands of village Piraman and village Gadkhol and, as the price of lands of both the villages had increased, the Reference Court should have awarded higher compensation. The learned counsel appearing for the claimants stressed that the appellants had failed to lead evidence before the Reference Court and, therefore, the Reference Court was not justified in not placing reliance on the documentary as well as oral evidence produced by the respondents in support of their claim for enhancement of compensation. at the rate of Rs.1500/per Are. Lastly, it was submitted by the learned counsel appearing for the claimants that enhancement of compensation claimed by them at the rate of Rs.1500/- per Are is just and reasonable and, therefore, cross objections filed by the claimants should be allowed whereas the appeals filed by the appeals should be dismissed.

13. The learned counsel for the appellants and the respondents have taken us through the oral and documentary evidence adduced before the Reference Court. From the oral testimony of the witnesses examined by the respondents, it becomes evident that the old and new

national highways towards Mumbai and Ahmedabad pass through the lands of village Piraman and village Gadkhol. The railway facility is also available to the residents of both the villages. As per the oral testimony of the witnesses of the respondents, Ankleshwar-Rajpipla road also passes through the lands of village Gadkhol, and Ankleshwar-Andada road as well as the road towards Valia-Dediapada from Ankleshwar also passes through the lands of village Piraman. Therefore, from the oral testimony of the witnesses examined by the respondents, it becomes evident that villages Gadkhol and Piraman are connected by roads with Ankleshwar and other surrounding villages. The evidence of these witnesses also shows that prior to publication of notification under Section 4(1) of the Act, industrial activities surrounding both the villages had gathered momentum and many private industries were established near the acquired lands. O.N.G.C. residential colony was situated near the lands of village Gadkhol since the year 1962. Near the acquired lands of village Piraman, many factories were established, i.e, Bright Bar, Ranchhodrai Pulse Mill, Carboard factory, Sugar factory, and Dinesh Mill, prior to issuance of notification under Section 4(1) of the Act. On the northern side of village Piraman, construction activities had started and Mission School and Church were established. It is also evident from the oral testimony of the witnesses that village Piraman was situated at a distance of one kilometer from Ankleshwar Highway. It is also borne out from the oral testimony of the witness of the respondents that, due to development on the northern side, octroi limits of Ankleshwar Town were extended and octroi-naka was placed on the lands of village Piraman. It is established by the oral testimony of the witnesses that the acquired lands of villages Piraman and Gadkhol were similarly situated having same fertility and the acquired lands of both the villages were having building potentiality prior to issuance of notification under Section 4(1) of the Act.

14. Before the Reference Court, the respondents had produced various sale deeds which were admitted in evidence by the Reference Court but neither vendor nor vendee nor scribe of the document was examined to prove the contents of sale deeds, and, therefore, the Reference Court should not have considered them while determining market value of lands acquired. (See: Special Deputy Collector vs. Kurra Sambasiva Rao reported in AIR 1997 Supreme Court 2625).

15. It is well settled legal principle that previous

judgments and awards of the Reference Court, if they relate to similarly situated adjacent lands and have become final provide good guidance in determining the market value of the lands acquired subsequently. There is no doubt that, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred. For a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgment of court and as an instance, it must have been provided by the person relying upon such judgment by adducing evidence *alliuende* that due regard being given to all attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land. The basis of the valuation as found by a competent court with regard to the neighbouring land which has become final has to be taken into consideration for determining the just compensation for lands acquired subsequently. The award passed by the Land Acquisition Officer may serve as a basis to determine the compensation, but the order passed by the civil court on reference under section 18 of the Act which has become final definitely binds both parties with regard to the price that was prevailing in that area.

16. It is pertinent to note that lands of same villages, i.e., villages Piraman and Gadkhol, came to be acquired for extention of Ankleshwar Industrial Estate, by notification issued under Section 4(1) of the Act on October 20, 1977, and this very Bench had determined the market price of the acquired lands of villages Piraman and Gadkhol as on October 20, 1977, at Rs.685/-per Are, vide judgment and order dated December 23,1998, rendered in First Appeals Nos. 170 of 1990 to 193 of 1990, with cross First Appeals Nos. 2527 of 1992 to 2551 of 1992. Notification under section 4(1) of the Act pursuant to which the lands of villages Piraman and Gadkhol which are subject matter of these appeals and cross objections were acquired, was published on January 22, 1979. Therefore, there is a gap of nearly one year and three months between two notifications issued under Section 4(1) of the Act. As noted earlier, there was heavy pressure on the lands of villages Piraman and Gadkhol due to industrial activities which had taken place in the surrounding villages. Vast lands of different villages surrounding towns of Bharuch and Ankleshwar were acquired

by the Gujarat Industrial Development Corporation for establishment of industrial estate in this area. Therefore, the Court can presume that, day by day, there was increase of price of lands of villages surrounding both the towns. As there was gap of one year and three months between two notifications, by which the lands of both villages came to be acquired for the same purpose, we hold that price rise of 15% should be given to the determination of market price of lands of both the villages, which was determined, keeping in mind notification under Section 4(1) of the Act as on October 20, 1977. The acquired lands, which are subject matter of the present appeals, were acquired by notification under Section 4(1) of the Act published on January 22, 1979. As held earlier, there was heavy pressure on the lands of both villages because of the industrialisation. In our view, 15% market rise can be given as there was gap of one year and three months between the two notifications. Applying 15% price-rise on Rs.685/- per Are, the figure of Rs.102.75 will have to be added (which is rounded off at Rs.105) i.e. Rs.685 plus Rs.105 = Rs.790/- per Are. We, therefore, determine the market value of the acquired lands of village Gadkhola and Piraman at Rs.790/- per Are as on January 22, 1979, when the notification under Section 4(1) of the Act was published.

17. Direction with regard to grant of interest on the additional amount under Section 23(1-A) of the Act and on the amount of solatium under Section 23(2) of the act deserves to be set aside in view of the pronouncement of the Apex Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in JT 1995(2) SC 583. The pertinent observations made by the Apex Court in paragraph 7 of the reported decision are as under:-

"It would thus be seen that the additional amounts envisaged under sub-ss(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under s.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the court as envisaged under the proviso."

18. In view of the above-referred to enunciation of law by the Apex Court, operative part of the order in so far as it directs the appellants to pay interest on the

amount envisaged under Sections 23(1-A) and 23(2) of the Act will have to be set aside.

19. For the foregoing reasons, the appeals filed by the State of Gujarat are partly allowed. The market value of the acquired lands on the date of publication of the notification under section 4(1) of the Act, i.e., January 22, 1979, is determined at Rs. 790/- of the acquired lands of villages Gadkhola and Piraman. The appeals filed by the Officer on Special Duty (Land Acquisition) Ahmedabad are partly allowed, whereas the cross objections filed by the respondents for enhancement of compensation are dismissed. The direction given by the Reference Court to pay interest on the amounts envisaged under section 23(1-A) and 23(2) of the Act is set aside. The direction with regard to the amount calculated at the rate of 12% per annum under section 23(1-A) is also modified and the claimants shall be entitled to the additional amount under section 23(1-A) from January 22, 1979, till the date of taking over possession of the acquired lands. The claimants shall be entitled to interest under section 28 of the Act from the date of taking over possession of the lands acquired at the rate of 9% for the first year and on expiry of the first year, at the rate of 15% per annum till the realisation or till deposit of the enhanced compensation in the Court. There shall be no order as to costs in both the groups of appeals. The office is directed to draw decree in terms of this judgment.

(swamy)